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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,163	07/13/2006	Ryosuke Toriyama	NIS-16758	7019
40854 7590 01/26/2009 RANKIN, HILL, & CLARK LLP 38210 Glenn Avenue WILLOUGHBY, OH 44094-7808				
EXAMINER				
DENNIS, MICHAEL DAVID				
ART UNIT		PAPER NUMBER		
3711				
MAIL DATE		DELIVERY MODE		
01/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/597,163

Applicant(s)

TORIYAMA ET AL.

Examiner

MICHAEL D. DENNIS

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 2, 7 and 14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3-6, 8-12, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 13, 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is made Final in response to applicants Amendments / Request for Reconsideration filed 12/15/08. Claims 2, 7 and 14 are cancelled; claims 1, 6, 13, and 18 are substantially amended; claims 1, 3-6, 8-13 and 15-19 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al.

As per claims 13, 15 and 17, Lee et al. discloses a toy foot structure comprising a foot section having a tiptoe section and a heel section 202, and a heel mounting mechanism 181 that attaches the heel section to a shin section 166 (Fig. 1); the heel mounting mechanism being constructed in such a manner that the heel section can move with respect to the shin section so

that a whole bottom face of the heel section can be in full contact with a setting surface whenever the shin section stands erect or the shin section is inclined in lateral direction as seen from the tiptoe side (column 7, lines 20-33); wherein the heel mounting mechanism allows for the heel to be inclined to the right and left, and back and forth, with respect to the shin section when the shin section is seen from the tiptoe sections (column 7, lines 20-33) due to the two degree of movement allowed by the pivoting joints (heel and toe) within the foot structure; wherein the foot structure further comprises a shaft 214, orthogonal to a longitudinal direction of the shin section and extending in a direction where the tiptoe section and the heel section are disposed side by side so that the heel section can swing in a predetermined angular range with respect to the shaft. Lee et al. further teaches wherein the toe section can move independently to the heel section about pivot pin 206, but does not expressly disclose pivoting in an orthogonal direction (i.e. left to right of the shin). However, as shown in Fig. 15, Lee et al. teaches that it is well known to provide two degrees of freedom for humanoid appendages, wherein pivoting in two directions is permitted. Hence, one having ordinary skill in the art would have found it obvious to provide two degree of pivot of the toe section in order to promote realism....in a manner similar to swivel 424.

As per claim 16, the shaft 214 is constituted integrally with the heel and shin section and includes a shaft supporting structure 204, 206, rotatably supporting the shaft.

Allowable Subject Matter

4. Claims 1, 3-6, 8-12 and 18-19 are allowed.

Response to Arguments

5. Applicant's arguments have been fully considered but they are not persuasive. See rejection above.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL D. DENNIS whose telephone number is (571)270-3538. The examiner can normally be reached on 8:00 - 6:00 (off every other Fri.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD
1/15/08
/Gene Kim/
Supervisory Patent Examiner, Art Unit 3711